FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 150/2006
(Sau. Dwarkabai Bholaji Chaudhari Vs. Sau. Prbhawati Vinayakrao Bhoyar & 2 ors.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Rugved Dhore h/f Mr. Nitin Sambre, Adv. for appellant.
Mr. P.A. Deshmukh, Adv. for respondents.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 24th September, 2007.

Heard the learned counsel for the parties.

The appellant is the original plaintiff. A suit was filed by the plaintiff for partition and separate possession of her share in the suit property. According to the plaintiff, the suit property belonged to one Ramchandra. The plaintiff and the defendant no.1 are the daughters of Ramchandra. There were no male issue to Ramchandra and the defendant nos. 2 and 3 are the sons of defendant no.1- Prabhawati. In spite of the notice issued by the plaintiff, the defendants refused to partition the suit property and, therefore, the instant suit was instituted.

The defendants denied the claim of the plaintiff by a joint written statement. They admitted the relationship between the parties and pleaded that Ramchandra had executed a registered Will on

14/12/1994 and in pursuance of the said Will, certain properties were given to the plaintiff as well as the defendant nos. 1, 2 and 3. According to the defendants, they became the absolute owner of the property of which bequest was made in their favour by their father and grandfather. The defendants, therefore, pleaded that the suit filed by the plaintiff was liable to be dismissed.

Both the Courts concurrently held that the defendants had succeeded in proving that all the parties to the suit were granted certain properties by the Will dated 14/12/1994. The Courts appreciated the evidence of the defendants and their witness which also included the attesting witness to Will, to hold that the defendants have proved that Ramchandra was in sound state of mind and health at the time of execution of the Will dated 14/12/1994 and the execution of the Will was duly proved by the defendants and the attesting witnesses to the Will. The Courts, therefore, dismissed the suit filed by the plaintiff.

The findings recorded by both the Courts are based on a proper appreciation of the material evidence on record. The plaintiffs had not challenged the validity of the Will in this case though the defendants had pleaded that the parties had received certain properties in view of the bequest made by Ramchandra in their favour.

Since no substantial question of law arises in this second appeal, same is dismissed with no order as to costs.

JUDGE

RMP